IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/09/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.No.4436 of 2001

M/s.V.K.B.Hotels India (P) Ltd.,
rep. by its Managing Director,
Mrs.B.Palaniammal .. Petitioner

-Vs-

1. The Tamil Nadu Industrial
Investment Corpn. Ltd.,
rep. by its Managing Director,
Chennai.

2. The Branch Manager,
Tamilnadu Industrial Investment
Corpn. Ltd.,
Madurai (SSI) Branch,
Madurai-20. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : No appearance

For respondents : Mr.R.Viduthalai for R.2
No appearance for R.1

:O R D E R

This Writ Petition has been filed praying to issue a Writ of Mandamus forbearing the respondents from selling the property in public auction in pursuant to the letter issued by the second respondent in TIIC/MDU/BO/SSI/LAO/ MR.2000-01 dated 23.2.2001 and further direct the respondents to reschedule the loan amount due by the petitioner.

2. The case of the petitioner Hotel is that they approached the respondent for the grant of loan of Rs.85 lakhs and the same was sanctioned on 24.4.1997; that initially, the respondent disbursed a sum of Rs.44.88 lakhs out of the sanctioned loan of Rs.85 lakhs; that the respondent, instead of disbursing the balance amount of Rs.40 lakhs started demanding

repayment of the loan; therefore, the petitioner Hotel repaid a loan of Rs.2.50 lakhs; that the petitioner Hotel has offered sufficient security for the loan; that they met the second respondent and the second respondent also agreed for reschedule, however, started insisting for payment of Rs.10 lakhs by its letter dated 22.1.20 01 and the petitioner also paid a sum of Rs.1 lakh on 2.2.2001 with a request to permit them to pay the balance in instalments; however, the respondent, without considering their request, sent a notice on 23 .2.2001 directing them to pay a sum of Rs.4 lakhs, failing which, the Hotel would be brought for sale in public auction. Hence the writ petition.

3. In the counter affidavit, the respondents would submit that the petitioner Hotel alone delayed the implementation of the project and availed a loan of Rs.49.51 lakhs; that as per the documents executed by the petitioner and the terms and conditions of loan sanction, the petitioner Hotel is liable to pay the interest periodically on the amount drawn by them; however, the petitioner was allowed to pay the principal amount in instalments; that a sum of Rs.22.20 lakhs have fallen due in the interest account alone and even after repeated demands, the petitioner did not pay the interest. Hence the notice.

4. The respondents would further submit that the petitioner failed to comply with the conditions for availing the loan and caused inordinate delay in implementation and hence, now the petitioner cannot choose to allege that the respondents shall not make demand without disbursing the entire loan amount; that it is not possible for the respondents to disburse the entire loan amount in one stroke without the petitioner brining their margin money and creating proportionate assets; that the present value of the building is not a factor for the respondent Corporation and it being a public financial institution, a duty is cast upon it to recover the dues from the borrower and to recycle the funds for the needy entrepreneurs in the interest of industrial development; that the present position of the account as on 19.11.2 001 is that the principal amount is Rs.49.51 lakhs and the interest is Rs.40.88 lakhs which comes to a total amount of Rs.90.39 lakhs.

5. Today, when the above matter has been taken up for hearing, no representation was made on behalf of the petitioner as well as the first respondent. However, the learned counsel for the second respondent was present and argued his case. Hence, this court is left with no option but to pass orders on perusal of the materials made available on record and upon hearing the learned counsel for the second respondent.

6. In support of the case of the respondents, the learned counsel for the second respondent would submit that the Apex Court in UP Financial Corporation Vs. Gem Cap India P. Ltd., reported in AIR 1993 SC 1435 has held that Courts cannot interfere with the action under Section 29 of the SFCs Act unless there is unfairness and that the SFC has to recover the dues. Learned counsel would further bring to the notice of this Court that a Division Bench of this Court in Writ Appeal No.507 of 1993 (TIIC Vs. Vimal Formulations P Ltd.) followed the same and had declined to intervene, setting aside the order passed in W.P.No.485 of 1993 wherein it is held that the financial institution (TIIC) cannot be made to wait for realisation of their

money as it would frustrate their public purpose, viz., making funds available to others either for the purpose of starting or expanding industries; that they are in need of funds for discharging their duties and functions and such funds could be secured only by taking necessary steps for the recovery of the amount due to them.

7. In consideration of the facts pleaded and the circumstances brought-forth and in further consideration of the decisions rendered by the Apex Court and by this Court as well extracted supra and on a perusal of the materials made available on record, this Court is able to find that it is a loan transaction held in between the petitioner and the respondents and on account of non payment of the dues as per the schedule by the petitioner, the second respondent has been made to issue the notice mentioned herein advising the petitioner to take immediate steps to clear the over dues within seven days, least to advertise the petitioner Hotel for public auction and it is this legal notice issued by the second respondent, which is challenged in the above Writ Petition.

8. Excepting for the fact that it is a dispute that has arisen from out of the loan transaction held in between the petitioner and the respondents, which is purely a civil affair, no legality or constitutionality could be seen, that which could be remedied by only this forum under Article 226 of the Constitution of India and in fact, the petitioner should not have resorted to file the above Writ Petition before this Court and instead of re-coursing to the statutory laws which are open for the petitioner to seek resort to, the petitioner has wrongly chosen to initiate the above Writ proceeding before this Court probably with intent to obtain some colourable order, thus wasting the time of this Court enormously and therefore, the above Writ Petition becomes only liable to be dismissed with an exemplary cost and no relief much less the one as sought for in the relief column of the Writ Petition, the petitioner is entitled to and hence, the following decision.

In result,
(i) the above Writ Petition does not merit acceptance and becomes liable only to be dismissed with an exemplary costs and is dismissed accordingly, with the costs of Rs.10,000/- (Rupees Ten Thousand only) that is to be paid to the Chief Justice's Relief Fund, within a period of four weeks from the date that this order is made ready;

(ii) consequently, the connected Crl.M.P.Nos. 6266 of 2001 and 1666 of 2002 are also dismissed.

Index: Yes
Internet: Yes

gs/paa

To
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